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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,038	09/02/2003	Michael G. Bodary	03122	1551
23338	7590	02/09/2005	EXAMINER	
DENNISON, SCHULTZ, DOUGHERTY & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/652,038

Applicant(s)

BODARY ET AL.

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson (1979992). Olson teaches a container upward tapered frusto-conicle portion of stiff cellulosic material having a circumferential grain direction (pg. 3, ln. 11-13).
2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehmann (2344359), or in the alternative, over Lehmann in view either Olson, or Lee (2014477), or McConnell (3926657). Lehmann teaches a container upward tapered frusto-conicle portion of stiff cellulosic material having a circumferential grain direction (note the blank in Figs 1 and 2 that would have a grain direction that of the machine direction).

Note the container in Lehmann would have a circular base as shown in Fig. 7.

Regarding claim 3, the container shown in Fig. 3 would meet the claimed limitations.

In the alternative, either Olson (1979992) or Lee teaches that it is known in the art to provide a conical container with circumferential grain direction (Olson: pg. 3, ln. 11-13; Lee: pg. 2 ln. 16-17). It would have been obvious to one of ordinary skill in the art to provide a conical container with circumferential grain direction in Lehman as taught by either Olson or Lee to provide flexibility.

Furthermore, McConnell teaches that it is known in the art to manufacture a container in either direction. It would have been obvious to one of ordinary skill in the art to provide a conical container with circumferential grain direction in Lehman as taught by McConnell to provide an alternative direction.

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3. Claims 6-9, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Lehmann rejection, as set forth above, and further in view of Eisman et al. (5229182). It would have been obvious to one of ordinary skill in the art to provide multiple rows in staggered relation to in Lehmann as taught by Eisman to provide save material and to facilitate mass production easily.

4. Claims 1-9, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisman et al. (5229182) in view of either Olson, or Lee, or McConnell. Eisman teaches a carton blank having multiple rows. It would have been obvious to one of ordinary skill in the art to provide the blank with grain in the circumferential grain direction as taught by Olson or Lee or McConnell to provide flexibility in the final container.

Regarding claim 12, it would have been obvious to one of ordinary skill in the art to provide the material in the thickness as claimed to provide the desired strength of the container.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Eisman rejection, as set forth above, and further in view of Herbst et al. (4552264). It would have been obvious to one of ordinary skill in the art to use the arrangement of the blank in Eisman combination to manufacture the container in Herbst to enable one to manufacture different types of containers.

6. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbst et al. (4252264), in view either Olson or Lee or McConnell. Herbst teaches a container upward tapered frusto-conicle portion of stiff cellulosic material. It would have been obvious to one of ordinary skill in the art to provide circumferential grain direction in Herbst as taught by either Olson or Lee or McConnell to provide flexibility in the final container.

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7. Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Herbst rejection as set forth above, and further in view of Eisman et al. (5229182). It would have been obvious to one of ordinary skill in the art to provide multiple rows in staggered relation to in Lehmann as taught by Eisman to provide save material and to facilitate mass production easily.

Regarding claim 12, it would have been obvious to one of ordinary skill in the art to provide the material in the thickness as claimed to provide the desired strength of the container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727

